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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:
12 **FRANCINE C. MENCHACA**
13 **a.k.a, FRANCINCE SECELIA**
MENCHACA
14 11326 Tiara Street
North Hollywood, CA 91601
15 Respondent.

Case No. 4090

STATEMENT OF ISSUES

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about September 8, 2010, the Board of Pharmacy (Board) received an
21 application for Registration as a Pharmacy Technician from Francine C. Menchaca, also known
22 as Francine Secelia Menchaca (Respondent). On or about May 21, 2010, Respondent certified
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on or about March 1, 2011.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the applicant
8 has one of the following:

9

10 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
11 would be grounds for suspension or revocation of license.

12 (B) The board may deny a license pursuant to this subdivision only if the crime or act
13 is substantially related to the qualifications, functions, or duties of the business or profession for
14 which application is made."

15 5. Section 492 states, in pertinent part:

16 "Notwithstanding any other provision of law, successful completion of any diversion
17 program under the Penal Code, or successful completion of an alcohol and drug problem
18 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
19 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
20 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
21 division, from taking disciplinary action against a licensee or from denying a license for
22 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
23 record pertaining to an arrest. This section shall not be construed to apply to any drug diversion
24 program operated by any agency established under Division 2 (commencing with Section 500) of
25 this code, or any initiative act referred to in that division."

26 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
27 subject to discipline, including suspension or revocation."

28 7. Section 4301 states, in pertinent part:

1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
3 Unprofessional conduct shall include, but is not limited to, any of the following:

4

5 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10

11 "(j) The violation of any of the statutes of this state, or any other state, or of the United
12 States regulating controlled substances and dangerous drugs.

13

14 "(p) Actions or conduct that would have warranted denial of a license."

15 **8. CONTROLLED SUBSTANCE**

16 "Cocaine," is a Schedule II controlled substance as designated by Health and Safety Code
17 Section 11055, subdivision (b)(6) and is categorized as dangerous drug pursuant to section 4022.

18 **9. DANGEROUS DRUGS**

19 "Hairspray," is a sticky, quick drying liquid sprayed on the hair to keep it in place and is
20 categorized as dangerous drug pursuant to section 4022.

21 **CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts Warranting Denial of Licensure)**

23 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
24 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
25 licentiate of the business and profession, would be grounds for suspension or revocation of her
26 license as follows:

27 a. On or about July 10, 2010, during a traffic collision investigation, by the San
28 Bernardino County Sheriff's Department, Respondent was contacted. While speaking to

1 Respondent, she displayed signs and symptoms of being under the influence of a controlled
2 substance. She was observed to have fixated eyes and a rapid pulse. When asked if she had used
3 cocaine the night before, Respondent denied using cocaine, but admitted to using inhalants such
4 as hairspray. Respondent was subsequently arrested for violating Health and Safety Code section
5 11550, subdivision (a) [under the influence of a controlled substance]. During the booking
6 procedure, Respondent admitted that it had been two weeks since she last used cocaine.

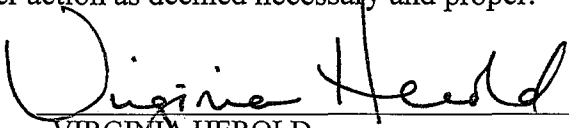
7 b. Respondent used and was under the influence of a controlled substance to wit cocaine
8 and or metabolites, as well as an benzodiazepines, in violation of section 4301, subdivisions (h)
9 and (j).

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board issue a decision:

- 13 1. Denying the application of Respondent for Registration as a Pharmacy Technician;
14 and
15 2. Taking such other and further action as deemed necessary and proper.

16 DATED: 5/26/12


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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